REMARKS

The Office Action of June 14, 2007 has been carefully considered. Reconsideration of this application is respectfully requested in light of the arguments and amendments set forth herein.

Turning now to the office action, claims 1-8 were rejected under 35 USC §102(b) as being anticipated by the American Classic jar label ("Label"). Claims 10, 12-18 and 20-23 were rejected under 35 USC §103(a) as being unpatentable over Lui [sic] et al. US 6,982,101 ("Liu") in view of the Label. Claims 9, 11, 19 and 24 were rejected as being unpatentable over "the above combined references as applied to the above claims," and further in view of US 4,143,176 to Krisinski et al. ("Krisinski").

Traversal of Rejections

Turning next to the rejection of claims 1-8 under 35 USC §102(b) as being anticipated by the American Classic jar label ("Label"). In the response filed in January 2007, an Affidavit under 37 CFR 1.131 was included that set forth the circumstances of the Label. As the label was affixed to peanut butter produced by the assignee of the current application less than one year before the filing of the provisional application (60/425,980) from which priority is claimed. In light of the prior submissions relative to the Label, and the Examiner's acknowledgement during the telephonic interview, Applicants once again urge that the rejection of claims based upon the Label is improper. Accordingly, the rejection under 35 USC §102(b) is respectfully traversed.

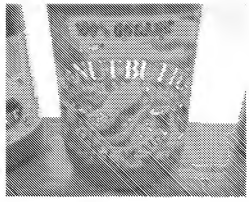
Although the remaining rejections similarly rely on the Label as the basis for the rejection, Applicants take this opportunity to note for the Examiner further distinctions between the claimed invention and the teachings of Liu etc.

Considering claims 10, 12-18 and 20-23, rejected under 35 USC §103(a) as being unpatentable over Liu in view of the Label, Applicants respectfully urge that Liu clearly teaches away from the present invention and is not properly considered as the basis for the rejection. Liu is directed to nut butter spreads, and does describe steps for making such spreads. However, Liu not only states that peanut oil is the preferred edible oil for peanut butter (col. 3, lines 9-10), but clearly suggests that a "sweetening composition"

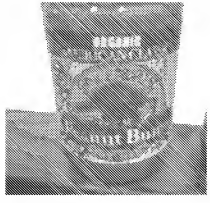
be added to nut pastes (col. 3, lines 35-36). The sweetening composition is described as including a stabilizer to prevent oil separation between the solid and edible oil phases (col. 3, lines 65-67). The stabilizers are described by Liu as "hydrogenated vegetable oils and their derivatives" (col. 4, line 1). Hence, Liu teaches that a hydrogenated vegetable oil is to be employed as a stabilizer to prevent the separation of the peanut solids and added edible oils. Such teachings are believed contrary to the objectives of the claimed invention - an organic peanut butter that does not separate.

In setting forth various rejections, the Examiner has further urged that "nothing new is seen in using organically grown peanuts." Such a statement ignores several aspects of the claimed invention (organic peanut butter as set forth in the pre-amble), and the particular limitations set forth (organic peanuts and organic, non-hydrogenated palm oil). Similarly, in the Office Action (ARGUMENTS; pp. 5-6), the Examiner appears to suggest that it is not generally known that peanut butter is subject to separation. Although it is believed that separation is well-known, particularly in organic peanut butters that cannot use hydrogenated or other synthetic stabilizers, Applicants further submit the attached Affidavit that illustrates that the peanut butter produced by the Rombauer "recipe" does indeed separate. Moreover, as the Applicants have further demonstrated by the samples delivered for the Examiner's consideration on August 3, 2007 via SPE Hendricks, organic peanut butter is indeed likely to separate after production – unless produced as described in the instant application. Considering the samples delivered (4 jars), two of the samples were produced in accordance with the recipe of Rombauer as discussed in the Affidavit, and within days of their manufacture, and despite shaking during transportation had begun to separate (as evidenced by the liquid oil rising to the top surface), and upon tipping of the jar the top layer of material would pour therefrom.

Similarly, the Assignee of the instant application also provided a jar of its traditional organic peanut butter (pictured below). In this jar, separation of the oil from the peanuts is readily observable, and upon opening the jar and tipping it, oil may be poured from the surface.



On the other hand, observation of the "American Classic" labeled jar (pictured below), one observes no indication of separation and if the top is removed, the jar can be inverted and no oil or liquid mixture (i.e., oil and solids) leaves the jar.



Given the constraints of using only organic materials, and yet producing a peanut butter as defined under 21 CFR §164.150, Applicants have identified a novel composition, and method of manufacture, particularly an organic peanut butter that does not separate during storage at room temperature for at least 60 days.

Claims 9, 11, 19 and 24 were rejected as being unpatentable over "the above combined references as applied to the above claims," and further in view of Krisinski. As previously noted the rejection fails to state with specificity which combination of patents and/or publications are relied upon for the rejection. Notwithstanding the lack of specificity in the rejection, Applicants submit that claims 9, 11, 19 and 24 are all dependent from either claims 1 or 12, and are also patentably distinguishable for the reasons set forth above relative to independent claims 1 and 12. Furthermore, Applicants respectfully contend that the limitations in amended claims 9 and 19 are not

taught by Krisinski, and are indeed taught away from by Krisinski (teaching only a portion of germ being used; col. 2, line 25).

In the event that that rejection of claims 9, 11, 19 and 24 is maintained, Applicants refer the Examiner to prior arguments (Response submitted January 2007), noting that the limitations of amended claims 9 and 19 are not taught and that Krisiniski teaches away from the limitations recited in rejected claims 9, 11, 19 and 24.

In view of the foregoing remarks and amendments, reconsideration of this application and allowance thereof are earnestly solicited. In the event that additional fees are required as a result of this response, including fees for extensions of time, such fees should be charged to USPTO Deposit Account No. 50-2737 for Basch & Nickerson LLP.

In the event the Examiner considers personal contact advantageous to the timely disposition of this case, the Examiner is hereby authorized to call Applicant's attorney, Duane C. Basch, at Telephone Number (585) 899-3970, Penfield, New York.

Respectfully submitted,

/Duane C. Basch, Esq. Reg. No. 34,545/
Duane C. Basch, Attorney for Applicants
Registration No. 34,545

Basch & Nickerson LLP
1777 Penfield Road
Penfield, New York 14526
(585) 899-3970

DCB/dcb